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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1965

No. 860

WOODMAR REALTY COMPANY, a Corporation, Debtor,

Petitioner,

vs.

WALTER A. McLEAN, Trustee,

Respondent.

* * * * *

In the Matter of the WOODMAR REALTY COMPANY, a Corporation. } In Proceedings for the Reorganization of a Corporation.

On Petition for Writ of Certiorari To The United States Circuit Court of Appeals For the Seventh Circuit.

BRIEF OF RESPONDENT IN OPPOSITION.

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BRIEF OF RESPONDENT IN OPPOSITION.

OPINIONS BELOW.

The Court of Appeals did not render an opinion. On September 23, 1964, it dismissed petitioner's appeal using the following language:

> "This matter comes before the Court on the verified motion of Walter A. McLean, Trustee, appellee in this matter, to dismiss appeal, together with brief

in support thereof; answer of Woodmar Realty Company, a corporation, to said motion, with brief in support of said answer; and the appellee's reply to appellant's answer to appellee's motion to dismiss, with brief in support thereof.

On consideration whereof, It Is Ordered and adjudged by this Court that this appeal from orders of the United States District Court for the Northern District of Indiana, Hammond Division, entered therein on April 28, 1964, be, and the same is hereby Dismissed, with costs, it appearing to the Court that the appellant is no longer a party in interest and lacks standing to appeal. (*In Re:V.I.D. Inc.*, 7 C.A. 1955, 226 Fed. (2d) 113).

All other pending motions filed in this appeal are thus rendered moot and need not be decided."

The opinion and order of the District Court dated April 28, 1964, from which petitioner's appeal is prosecuted is set out in Petitioner's Appendix A, at pages 1a to 23a.

A certified copy of the opinion and order of the District Court entered on September 23, 1963, was attached and made a part of the Trustee's Motion to Dismiss filed in the Court of Appeals and is now a part of the record in this matter.

JURISDICTION.

The jurisdiction requisitions are adequately set forth in the Petition.

QUESTIONS PRESENTED FOR REVIEW.

1. Was Woodmar Realty Company "a party in interest" in this bankruptcy proceedings on April 28, 1964, the date on which the order appealed from was entered, and did it have standing to appeal to the Circuit Court of Appeals from such Order?

CONSTITUTIONAL PROVISIONS, RULES, ETC., INVOLVED.

The jurisdiction of the Court of Appeals to review decisions of the District Court in bankruptcy matters is established by the following provisions of the Bankruptcy Act. 11 U.S.C.A. § 47 provides as follows:

> § 47. Jurisdiction of appellate courts.
>
> (a) The United States courts of appeals, in vacation, in chambers, and during their respective terms, as now or as they may be hereafter held, are invested with appellate jurisdiction from the several courts of bankruptcy in their respective jurisdictions in proceedings in bankruptcy, either interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and in matters of fact: Provided,

however, that the jurisdiction upon appeal from a judgment on a verdict rendered by a jury shall extend to matters of law only: And provided, further that when any order, decree, or judgment involves less than $500, an appeal therefrom may be taken only upon allowance of the appellate court.

(b) Such appellate jurisdiction shall be exercised by appeal and in the form and manner of an appeal.

(c) The Supreme Court of the United States is vested with jurisdiction to review judgments, decrees, and orders of the United States courts of appeals in proceeding under this title in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted. As amended May 27, 1926, c. 406, § 9, 44 Stat. 664; June 7, 1934, c. 426, 48 Stat. 926; June 22, 1938, c. 575, § 1, 52 Stat. 854; June 25, 1948, c. 646, § 32, 62 Stat. 991; July 7, 1952, c. 579, § 9, 66 Stat. 424.

11 U.S.C.A. Sec. 606, provides as follows:

"Sec. 606. The debtor, the indenture trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a proceeding under this chapter. The judge may, for cause shown, permit a labor union or employees' association, representative of employees of the debtor, to be heard on the economic soundness of the plan affecting the interests of the employees."

Sec. 121, 11 U.S.C.A., § 521, provides as follows:

§ 521. Appellate Jurisdiction.

"Where not inconsistent with the provisions of this chapter, the jurisdiction of appellate courts shall be the same as in a bankruptcy proceeding. July 1, 1898, c. 541, § 121, as added June 22, 1938, C. 575, § 1, 52 Stat. 885."

CONCISE STATEMENT OF THE RECORD.

This litigation was commenced on January 13, 1941, upon the filing in the District Court for the Northern District of Indiana of a Petition for the Corporate Reorganization of Woodmar Realty Company. Woodmar Realty Company immediately appeared in the proceedings and filed an answer admitting its "insolvency" and consenting to an adjudication.

Proceedings continued in corporate reorganization until February 16, 1953, at which time the District Court adjudged Woodmar Realty Company a bankrupt and ordered bankruptcy proceeded with under Section 236(2) of the Bankruptcy Act.

On September 7, 1955, Walter A. McLean, as Trustee, filed in the District Court a Trustee's Final Report, Petition for the Allowance of 313 Class 2 Claims, and a Petition for an order directing payment on such claims in certain amounts, and directing further the payment of certain sums on unpaid special assessment bonds and coupons constituting liens on the bankrupt's real estate on which no claims were filed.

In the next few months, the bankrupt, Woodmar Realty Company, filed objections to 274 Class 2 claims out of the 313 claims then pending. As stated many times in this litigation, the claims described as Class 2 claims were all on special assessment bonds and coupons constituting liens on the bankrupt's real estate. The claims were general in nature and the objections filed thereto, as admitted by the bankrupt, were virtually the same

as to all claims, and such objections raised the same factual and legal defenses.

Thereafter, the trustee filed a motion to dismiss all of the bankrupt's objections to the Class 2 claims on the theory that the bankrupt was "insolvent" and was, therefore, not a "party in interest" and had no standing as an insolvent bankrupt to file objections to such claims.

The Trustee's motion to dismiss the bankrupt's objections was sustained in the District Court and Woodmar Realty Company then appealed to the Court of Appeals and obtained a reversal in 1957 (241 Fed. 2d 768), the Court of Appeals holding in effect that inasmuch as Woodmar Realty Company had objected to virtually all of the claims against the bankruptcy estate, and if it was successful in its objections to such claims there would necessarily be a substantial fund available to it, then held that Woodmar Realty Company was "a party in interest" with the right to object to claims.

Upon reversal in this appeal this bankruptcy litigation was referred to Judge W. Lynn Parkinson in the District Court, and in June 1957, a typical claim, Claim 441, was selected as a "test claim" under the following agreement:

> "By agreement of all parties in interest who attended the pretrial conference in Lafayette, Indiana, on June 28, 1957, Claim 441 was to be tried as a "test" or "pilot" claim for the purpose of establishing general rules of law, by judicial decision, applicable to the 313 lien claims listed in the Trustee's Amended Final Report."

Thereafter, this "test" or "pilot" claim, Claim 441, was tried, and on July 21, 1961, the District Court found for the claimant and against Woodmar Realty Company and

held that the bankrupt's objections were "without merit". Woodmar Realty Company appealed from this decision and the District Court's judgment was affirmed by the Court of Appeals on August 20, 1962. (*In the Matter of Woodmar Realty Company*, CCA 7th, 1962, 307 F. 2d 591)

Immediately after the District Court's judgment on Test Claim 441, the Trustee herein filed a "Motion for Summary Judgment" in the District Court praying that on the basis of the record in the bankruptcy and on the basis of the District Court's judgment on Claim 441, that it be adjudged:

1. That Claim 441 was tried as a "test case" to determine the validity of the bankrupt's objections to all Class 2 claims;

2. That the bankrupt's objections to all Class 2 claims are without merit;

3. That there are no valid objections to any Class 2 claims;

4. That the bankrupt is not a party in interest and has no standing in this proceeding.

That after the Circuit Court of Appeals affirmed the judgment of the District Court on Claim 441, the District Court proceeded to consider the matters involved in the Trustee's Motion for Summary Judgment, with Woodmar Realty Company taking part before the District Court in this matter.

Thereafter, on May 20, 1963, the District Court, in an opinion and order as of such date, held as prayed for in the Trustee's Motion for Summary Judgment that Claim 441 was tried as a "test case",—and in such decree ordered the allowance of 36 Class 2 claims. Separate orders

of allowance of these 36 Class 2 claims in the amounts originally recommended for allowance in the Trustee's Final Report filed in September 1955 were entered on July 24, 1963.

Likewise, on May 20, 1963, the District Court considered the bankrupt's objections to 18 Fiduciary Claims which had been previously compromised and the court ordered the bankrupt's objections to such claims stricken from the record.

At the same time, on May 20, 1963, the District Court ordered the Trustee to supply to the court certain additional information as to 13 other Class 2 claims. These 13 claims were then allowed by separate order on December 31, 1963.

On September 23, 1963, in an additional ruling on the Trustee's Motion for Summary Judgment, the District Court ordered the allowance of 132 claims in the amounts originally recommended for allowance by the Trustee in the Trustee's Final Report filed in September 1955.

As heretofore set out, the Trustee's Motion for Summary Judgment prayed that it be adjudged that Woodmar Realty Company was not "a party in interest" in these proceedings.

In its opinion of September 23, 1963, the District Court granted the prayer of the Trustee's Motion for Summary Judgment and determined Woodmar Realty Company was not a party in interest, summarizing the status of Woodmar Realty Company as follows:

> "In the Opinion of the Court of Appeals for this Circuit in *In the Matter of The Woodmar Realty Company* (1957) 241 F. 2d 768, it was held that while the general rule is that a bankrupt is not a party in

interest entitled to object to claims, this case presented an exception to the general rule and Woodmar was a party in interest entitled to object to claims since, in the event of disallowance, there would be a surplus left for it. This ruling was made because the bankrupt represented that many valid objections to Class 2 claims had been filed by it and that the trustee would not object. After a full hearing in the test case, Claim No. 441, we held that the bankrupt had filed no valid objections to that claim, a holding which was affirmed on appeal. We have carefully and tediously examined the over 1300 objections filed by the bankrupt to the remaining 134 claims, and the statements with respect to those objections. We have found no substantial difference between the objections to Claim No. 441 and those to the remaining claims and have held that the remaining claims must be allowed. The bankrupt, having failed to show that any Class 2 claim as recommended for allowance by the trustee must be disallowed having been given a full opportunity to do so, is no longer a party in interest."

An order holding that the bankrupt was not a party in interest and had no standing in this proceedings was then entered in the District Court on September 23, 1963, based upon the court's opinion.

No appeal was ever taken from the District Court's order of May 23, 1963, or of the court's order of September 23, 1963, or of the separate orders of allowance of the then pending Class 2 claims.

There having been no appeal from the orders of allowance of claims and of the order of September 23, 1963, holding that Woodmar Realty Company was "not a party in interest", such decree became final in the District Court.

A certified copy of the District Court's order of May 23, 1963, and a certified copy of the court's opinion and order of September 23, 1963, are attached to the Trustee's Motion to Dismiss filed in this matter in the Court of Appeals.

The order from which the Woodmar Realty Company sought to appeal to the Circuit Court of Appeals in this proceedings was entered in the District Court on April 28, 1964,—7 months after the District Court's opinion and order of September 23, 1963, determined that Woodmar Realty Company was "not a party in interest".

A copy of the District Court's opinion and order of April 28, 1964, is found in the Appellant's Appendix on pages 1a to 23a.

Upon the docketing of this appeal in the Circuit Court of Appeals as Cause No. 14756, the appellee, Walter A. McLean, Trustee, filed his verified motion to dismiss such appeal with supporting brief, contending:

1) That the District Court on September 23, 1963, entered an order holding that Woodmar Realty Company was "no longer a party in interest" in this proceedings;

2) That no appeal had been taken by Woodmar Realty Company from the District Court's Order of September 23, 1963, and that such order was a final adjudication as to the status of Woodmar in this proceedings;

3) That Woodmar Realty Company, factually as well as legally, was not "a party in interest".

On September 23, 1964, the Court of Appeals, through Judge Wm. G. Knoch, Latham Castle, and Roger J. Kiley, sustained the Trustee's Motion to dismiss this appeal with the following Order:

> "On consideration whereof, it is Ordered and Adjudged by this Court that this appeal from orders of the U. S. District Court for the Northern District of Indiana, Hammond Division, entered therein on April 28, 1964, be, and the same is hereby dismissed with costs, it appearing to the court that the appellant is no longer a party in interest and lacks standing to appeal. (*In re*: *V.I.D. Inc.*, 7th Cir. 1955, 226 F. 2d 113)."

The same three judges, as a panel, sat on three previous Woodmar appeals in the last three years, including the appeal on the test claim, Claim 441.

Thereafter, Woodmar Realty Company filed a Petition for Rehearing, and such petition was denied on October 14, 1964, without the Trustee-Appellee filing a reply thereto.

ARGUMENT.

The petitioner, Woodmar Realty Company, is not a "party in interest", and as such had no standing to appeal to the Court of Appeals from the order of the District Court entered therein on April 28, 1964, and has no standing to petition this court for review by certiorari.

I.

The order of the District Court from which Woodmar Realty Company sought to appeal to the Court of Appeals was entered on April 28, 1964.

On September 23, 1963, the District Court Judge, before whom this matter had been pending for more than five years, in ruling on a Motion for Summary Judgment filed by the Appellee-Trustee, held as follows:

> "the bankrupt, having failed to show that any Class 2 claim as recommended for allowance by the Trustee must be disallowed, having been given a full opportunity to do so, *is no longer a party in interest.*"

The Court of Appeals, on ruling on the Appellee-Trustee's Motion to Dismiss this appeal, said as follows:

> "On consideration whereof, it is ordered and adjudged by this court that the appeal from the orders of the United States District Court for the Northern District of Indiana, Hammond Division, entered therein on April 28, 1964, be, and the same is hereby dismissed, with costs, it appearing to the court that *the appellant is no longer a party in interest and lacks standing to appeal. (In re: V.I.D. Inc.*, 1955, 226 F. 2d 113)".

So, it would appear that the only question now to be considered is whether Woodmar Realty Company is now and was on April 28, 1964, "a party in interest" in this proceedings and had standing to appeal from the District Court's Order of that date.

The wording "is no longer a party in interest" appearing both in the District Court's Order of September 23, 1963, and in the Court of Appeals Order dismissing this appeal deserves explanation.

The Woodmar Realty Company was adjudged insolvent in 1941 and placed in corporate reorganization. It was adjudicated a bankrupt in 1953. In 1955 the Trustee, Walter A. McLean, filed a Final Report recommending the allowance of 313 secured claims. The bankrupt objected to virtually all of such claims. The Trustee moved to dismiss the bankrupt's objections on the ground that the bankrupt, being insolvent, was not a party in interest. The District Court sustained such motion. Woodmar appealed, and the Court of Appeals reversed the District Court, holding that Woodmar, having objected to virtually all of such claims, would actually be "a party in interest" if its objections to claims were sustained, and then held that Woodmar was "a party in interest" with the right to object to claims.

This matter was sent back to the District Court. Rather than try each of the 313 claims—(the claims were largely identical in nature, and the objections raised the same legal and factual defenses to all claims)—a test claim—Claim 441—was selected for trial to establish the law as to all claims.

Such claim—441—was tried, and the bankrupt's objections were adjudged to be without merit, and this holding

was affirmed on appeal. The Trustee then filed a Motion for Summary Judgment seeking to apply the decision on the test claim—441—to all of the other claims—seeking to have it adjudged that the bankrupt's objections to all claims were without merit.

The District Court sustained the Trustee's Motion for Summary Judgment in two opinions,—on May 20, 1963, and on September 23, 1963—and made appropriate orders. In the last of such Opinion, the District Court held that the bankrupt's objections to all claims were invalid.

As indicated in the portion of the District Court's Opinion of September 23, 1963, quoted from pages 8 and 9 in this Reply,—Woodmar Realty Company,—once held to be a party in interest with the right to object to claims (*In the Matter of Woodmar Realty Company*, 1957, 241 F. 2d 768),—having now failed to show that any Class 2 claim as recommended for allowance by the Trustee must be disallowed, having been given a full opportunity to do so, is "*no longer a party in interest.*"

A recognition of this change of status of this insolvent bankrupt, is likewise found in the wording of the dismissal order of the Court of Appeals entered on September 23, 1964, "that this appeal * * * be and the same is hereby dismissed, it appearing that *the appellant is no longer a party in interest and lacks standing to appeal.*"

A careful reading of the two orders of the District Court, entered on May 20, 1963, and on September 23, 1963, as heretofore referred to, show that Woodmar Realty Company participated in the consideration of the Motion for Summary Judgment and the question of whether Woodmar was a party in interest was in issue as a point to be decided.

No contention was raised by the bankrupt appellant during the consideration of this Motion that it was not having its day in court or that the court did not have jurisdiction of the proceeding or the power or authority to rule on the Motion for Summary Judgment.

In the case of *In re*: *Fox West Coast Theaters*, CCA (Calif.) 88 F. 2d 212, the court, in discussing the finality of judgments and orders in bankruptcy, says:

> "The orders and judgments of the United States Courts in bankruptcy possess all the incidents and finality of courts of general jurisdiction in such matters; practically all orders in bankruptcy are appealable within thirty days as a matter of right or grace and in the absence of appeal, orders become final."

The Woodmar Realty Company did not appeal from the District Court's Order of September 23, 1963.

The order appealed from in this matter was entered in the District Court for the Northern District of Indiana, Hammond Division, some seven months later—on April 28, 1964.

At that time, the time for appeal from the order of September 23, 1963, had long since passed and the adjudication that Woodmar Realty Company was and is not a party in interest in this matter was a final adjudication of its status.

II.

The petitioner, Woodmar Realty Company, in its "Concise Statement of the Record", at pages 8 to 14, inclusive, does not mention the District Court's Orders of May 20, 1963, or of September 23, 1963, or that in the last of such

orders Woodmar had been adjudged to be "*no longer a party in interest*".

Likewise, under "Questions Presented for Review" at pages 4 and 5 of its Petition, no mention is made as to the effect of the two District Court Orders. The failure to list these two basic orders and to question their effect as an adjudication of the status of the bankrupt petitioner is strange indeed, especially in view of the terms and provisions of the Order of the Court of Appeals dismissing the petitioner's appeal wherein in plain and concise language this petitioner was held to be "no longer a party in interest".

Under the section of its Petition entitled "Questions Presented for Review" the petitioner lists four questions:

1) Whether Woodmar Realty Company, the appellant, as a corporate debtor had the absolute and unqualified right to a hearing on the merits in the Court of Appeals of an appeal from an order in the District Court setting aside compromise settlements agreements in which Woodmar Realty Company was originally a party.

2) Whether the provisions of Section 206 of the Bankruptcy Act grants to the petitioner the full and unqualified right to a hearing on the merits in the Court of Appeals from an appeal from the orders of the District Court.

3) Whether the "law of the case" or the decision of the Court of Appeals in two earlier appeals in the litigation was and is binding in the Court of Appeals in the present matter, and now require that it hear the present appeal on its merits.

4) Whether the Court of Appeals has or had the authority to dismiss an appeal in this matter without a hearing on the merits *where the appeal is taken by a party whose rights have been materially affected in a direct pecuniary way by an order complained of on appeal.*

In considering these problems,—as contentions made by the appellant petitioner—it should be noted that this bankruptcy matter was commenced in corporate reorganization in 1941,—that it was placed in a straight bankruptcy in February 1952, and has been in regular proceedings in bankruptcy since that time.

In order to answer the questions presented for review, Respondents will discuss such questions in the same order as they were listed by the petitioner.

ANSWER

To Questions 1 and 2 presented for Review.

Points 1 and 2 in the Petitioner's Questions for Review raise virtually the same contention that the terms and provisions of Sec. 206 of the Bankruptcy Act (11 USCA 606) grant to the petitioner the absolute right to a hearing on the merits in an appeal attempted to be taken by it from the orders of the District Court.

The Respondent contends that the basic right to be heard on the merits on an appeal from the District Court depends upon whether the appellant is a party in interest, —whether it has a right to be protected—and that this basic principle applies regardless of whether the appeal is from an order in bankruptcy or from an adjudication in corporate reorganization.

In the case of *In re: V.I.D. Inc.*, 1955, 7 CCA, 226 F. 2d 113, this being the case cited by the Court of Appeals in its dismissal order, the court at one place in discussing the dismissal of an appeal with the holding that the appellant was not a party in interest, says:

> "This court, *In re Michigan Ohio Bldg. Corporation*, 117 F. 2d 191, dismissed an appeal on our own motion because the appellants had no appealable interest. While that was a proceeding under Section 77, sub. b of the Bankruptcy Act, we think that the reasoning is pertinent here. We said, 117 F. 2d at page 193: "Speaking more specifically, a party has an appealable interest only when his property may be diminished, his burdens increased or his rights detrimentally affected by the order sought to be reviewed." It has also been recognized that in a Chapter X proceeding a creditor must be adversely affected as a prerequisite to a right to appeal. *In re Keystone Realty Holding Co.*, 3 Cir., 117 F. 2d 1003, 1005, 133 A.L.R. 1378. In *In the Matter of 620 Church Street Building Corp.*, 299 U.S. 24, 57 S. Ct. 88, 81 L. Ed. 16, the court considered the action of the Court of Appeals in denying leave to appeal from an order confirming a plan of reorganization under Section 77, sub. b. In discussing the issue the court made a statement which we think pertinent here, 299 U.S. at page 27, 57 S. Ct. at page 89: "Petitioners insist that their consent to the plan of reorganization was necessary or that their claims should have been accorded 'adequate protection.' But the adequate protection to which the statute refers is 'for the realization of the value of the interests, claims or liens' affected. Here the controlling finding is not only that there was no equity in the property above the first mortgage, but that petitioners' claims were appraised by the court as having 'no value'. There was no value to be protected."

Likewise, in the case of *Missouri Pacific R. Co.* v. *Thompson*, CCA 8th 1943, 134 F. 2d 139, the court was

called upon to consider the problem herein involved and holds:

> "Although the right to appeal from orders of the court in bankruptcy or in reorganization proceedings has been affected by the new Rules of Civil Procedure, neither the new rules nor the statutes justify appeals by parties without appealable interest."

On September 23, 1963, the District Court held that the petitioner "was no longer a party in interest". This order was an appealable order—and the bankrupt had the right of appeal, but it having then failed to do so, its status was judicially determined and then, when the order of April 28, 1964, was entered, it had been declared not a party in interest—it had no right or property to protect, no interest adversely affected by such order,—the setting aside of the compromises could not in any wise affect it—and, as a result, had no standing to appeal from the order of April 28, 1964, of the District Court.

ANSWER

To Petitioner's 3rd Question for Review.

As previously pointed out in this Argument, Woodmar Realty Company, petitioner herein, was adjudged to be a party in interest with the right to object to claims in 1957 by the Circuit Court of Appeals in *In re*: *Woodmar Realty Company*, 241 F. 2d 768, on the theory that if its objections to claims were sustained, it would then be a party in interest. Likewise, in the case of *In re*: *Woodmar Realty Company*, 1960, 284 F. 2d 815, the right to Woodmar to compromise claims was recognized. But these appeals were decided before the court's judgment on the test claim—441—had been decided, and before it had been determined and adjudged that all of the bankrupt's objections to claims were without merit.

After it had been judicially determined (See: District Court's Orders of May 23, 1963, and September 23, 1963) that the bankrupt's objections to all Class 2 claims were invalid, then in the order of September 23, 1963, this bankrupt, admittedly insolvent in 1941, adjudged insolvent in several instances in this proceedings, was judicially determined to be not a party in interest, and having failed to appeal from the order, had no standing to appeal from the later order of April 28, 1964.

ANSWER

To Petitioner's 4th Question for Review.

The fourth question allegedly presented for review by the appellant is whether the Circuit Court of Appeals had the authority to dismiss the appeal in this matter without a hearing on the merits "where the appeal is taken by a party whose rights have been materially affected in a direct pecuniary way by an order complained of on appeal."

As heretofore pointed out, this insolvent bankrupt,— in corporate reorganization since 1941, placed in bankruptcy in 1952, was at one time adjudged to be a party in interest with the right to object to claims on the theory that if it sustained valid objections to virtually all the claims in the bankrupt estate, then it would be entitled to the property in the bankruptcy estate, but when it was judicially determined that its claims were without merit, then it followed that the assets of the bankruptcy estate would go to the claimants and the bankrupt had no right or interest in any asset of the bankruptcy estate, and as stated by the Court of Appeals "has no standing to appeal."

This adjudication meant that the petitioner had nothing to protect—no pecuniary rights of any type or kind,—and the District Court so decided in its order of September 23, 1963. It then followed that the petitioner's contention that it was deprived of a valuable pecuniary right by the order of April 28, 1964, is without merit and the appellant is without standing to so contend.

III.

Respondent's Answer to Petitioner's Argument as Set Out In The Petition.

(1)

A.

Under a heading "The District Court Had No Right to Render A Final, Unappealable, Decision On a Question of Law", the Petitioner, in a rambling discussion lists the petitioner's version of the facts of the making of 102 compromise settlement agreements in the bankruptcy administration, such agreements being made by Woodmar Realty Company with lien claimants. The Petitioner then alleges that such compromises were approved by the District Court and that later on certain lien claimants sought to set aside such agreements, and the District Court then, by order of April 28, 1964, vacated and set aside such compromises—and then the petitioner alleges that Woodmar's appeal was dismissed.

Petitioner's argument fails to show that Woodmar Realty Company had any interest in the issuance of the order in the District Court on April 28, 1964,—or that Woodmar was in anywise affected by such order, or had any right or standing to appeal to the Court of Appeals from such order.

B.

The heading on this portion of the appellant's Argument is that "The Order and Opinion of April 28, 1964, Constituted An Erroneous Decision of Law. No Evidence Was Offered or Heard. The District Court's Views on Matters of Law Could Not And Can Not Preclude a Review of that Decision On The Merits."

In this portion of the appellant's Argument, Petitioner alleges that the order of April 28, 1964, in the District Court from which it attempted to appeal was an erroneous decision, but throughout this portion of the petition no matter is cited which would indicate that the Petitioner is in anywise affected by such Court Order or has any right to complain because of it.

Assertion is then made that no evidence was heard. The record now before this court, the opinion and order of the court of April 28, 1964, disproves this statement, but the Petitioner does not allege or show how Woodmar could be injured by such fact, if it was a fact. The last part of the title is that "The District Court's Views On Matters of Law Could Not and Can Not Preclude a Review of that Decision on the Merits".

After setting out this contention, the Petitioner asserts that Congress, in the Bankruptcy Act, 11 USCA 606, 11 USCA 47, 11 USCA 521, granted the Petitioner the valuable right of appeal.

Thereafter, the Petitioner, in support of this legal argument, cites several cases, a careful reading of which shows that they do not sustain the appellant's contention that it had the absolute and unqualified right to have its appeal heard on the merits absent showing that it is a party in interest.

C.

In this section of the Petitioner's Argument, contention is made that the Court of Appeals placed an unwarranted interpretation on the petitioner's right to be heard on appeal and that the court's order of dismissal of the appeal herein is in conflict with the decisions on the same point in other Circuits, and is likewise in conflict with a decision of the 7th Circuit.

The discussion of the right to appeal found in *In re*: *V.I.D. Inc.*, 1955, 226 F. 2d 113, and in *Missouri Pacific R. Company* v. *Thompson*, CCA 8th Cir. 1943, 134 F. 2d 139, as applied to appeals in corporate reorganization and in ordinary bankruptcy matters is sufficiently explanatory to refute the petitioner's contention that the court of Appeals improperly dismissed its appeal.

The cases cited by the petitioner: *Gleason* v. *Carr* (9th Cir. 1955) 219 F. 2d 64-67, and *Horowitz* v. *Kaplan* (1st Cir. 1951) 193 F. 2d 64-66 are not in conflict with the ruling of the Court of Appeals in this matter. The decision of the 7th Cir. in *In re*: *South State Street Building Corp.*, 7th Cir. 1944, 140 F. 2d 363, 366, 367, listed by the Petitioner as being in conflict with the present ruling of the Court of Appeals, upon study and examination is shown to be in accord with the court's present ruling.

(2)

In this portion of the appellant petitioner's Argument, contention is made that the case of *In re*: *V.I.D. Inc.* (1955) 7th Cir. 226 F. 2d 113, which was cited by the Court of Appeals in making its order dismissing the appellant's appeal, was not a proper authority for such action.

Other than making the assertion that the *V.I.D.* case is not in point, the petitioner does not discuss such holding and does not demonstrate that such case is not a ruling precedent.

The facts in this case are strikingly similar to the Woodmar litigation. It came up on appeal from the Northern District of Indiana, and the bankruptcy litigation had been pending for sixteen years. The legal problem of whether the appellant was a party in interest was the same in that case as it is here.

The Court of Appeals held that this case was in point, and we think the discussion of law involved is definitely applicable.

CONCLUSION.

The appellant's petition wholly fails to show any good reason why the action of the Court of Appeals in dismissing the appellant's appeal should be reviewed.

The question presented is a simple problem arising in the administration of a bankruptcy matter.

There is no important question of federal law requiring a decision by this court. The petitioner, in its Statement of Facts, shows that Woodmar Realty Company was in corporate reorganization in 1941, in straight bankruptcy in 1952, and that it has been in bankruptcy ever since that time, and that this dismissal of its appeal only means that the bankrupt is deterred in delaying the payment of the claims against its estate.

There is no conflict of decisions on the basic problem that an appealable interest is necessary for an appeal.

No established precedent has been violated. The problem is simple indeed. As shown in the record before this court, Woodmar Realty Company, on September 23, 1963, in the District Court, was adjudged to be "no longer a party in interest".

The Court, at the time of the making of this order, had jurisdiction of the parties and of the subject matter. At that time the petitioner had its opportunity to show that it was a party in interest. The petitioner had its day in court. After the adjudication in the order of September 23, 1963, Woodmar Realty Company failed to appeal, and this adjudication of its status became final.

Several months later, on April 28, 1964, another order that Woodmar objected to was made in this matter, but the appellant has failed to demonstrate or to show that it was at the time of the making of the order appealed from an interested party in this litigation.

Wherefore, it is respectfully submitted that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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